STORAGE NAME: h6001f.JDC
DATE: 4/19/2023

(April 19, 2023)

SPECIAL MASTER'S FINAL REPORT

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6001 - Representative Gottlieb
Relief/Leonard Cure/State of Florida

THIS IS AN EQUITABLE CLAIM FOR $817,000 TO COMPENSATE LEONARD CURE FOR MORE THAN 16 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

Crime and Initial Investigation

On November 10, 2003, at around 7:00 a.m., Ashraf Rizk ("Rizk"), the manager of a Dania Beach, Florida Walgreens ("Walgreens" or "store"), arrived at the store to find a male outside; he observed no vehicles in the parking lot but his own. When the male told Rizk he was only waiting for his son, Rizk entered the Walgreens and began his normal store-opening routine.

At around 7:15 a.m., Kathy Venhuizen ("Venhuizen"), a Walgreens employee, arrived at the store to find the male outside; she observed no vehicles in the parking lot but Rizk's and her own. The male followed Venhuizen towards the store, withdrawing a gun. Although Venhuizen tried to signal to Rizk not to open the door, Rizk did so anyway. Rizk began pushing and punching the male to prevent him from entering the store but the male pushed in, brandished the gun in his left hand, and threatened Rizk's life. A robbery ensued, during which the male obtained $1,700 in cash and fled from the store on foot, displaying signs of injury.

At around 7:24 a.m., Venhuizen called 911. Law enforcement responded to the scene and obtained the offender's description. Rizk described the offender as a black male wearing long blue jean shorts, a blue denim jacket, and a red baseball cap; he also stated that the offender was not missing any of his teeth. Venhuizen similarly described the offender's clothing, noting that he was wearing white gym shoes, and gave her impression of him as "neat" and "someone who cared about his appearance." However, she was adamant that the perpetrator was "missing teeth on the side, like [an] animal."

Neither Rizk nor Venhuizen knew the offender, and fingerprints collected from the door were of no value. Thus, with no suspect, on November 12, 2003, Rizk and Venhuizen met with BSO Detective Fernando Gajate to work on a composite sketch. Rizk and Venhuizen ultimately argued over the sketch, failing to agree on certain details, including his teeth.

Claimant's Identification and Arrest

Shortly thereafter, Broward Sheriff's Office ("BSO") Deputy Connie Bell ("Bell"), who had responded to the robbery scene, told the investigating BSO Detective, Jeff Mellies ("Mellies"), that she had seen a male matching the offender's description on the morning of the robbery and could identify him as the Claimant. Specifically, she said she that sometime between 7:00 a.m. and 8:00 a.m. that morning, while she was monitoring the school zone outside Dania Beach Elementary School ("DBES"), just south of the Walgreens, she observed a black male wearing blue jean shorts, a blue jean jacket, and a red baseball cap walk in front of her patrol vehicle accompanied by a boy she often saw walking to DBES with his sister.

The record reveals that Bell had actually met the Claimant shortly before the Walgreens robbery as she was assigned to check on new criminal registrants, including the Claimant, who was on parole[1] and had just relocated to Broward County. Bell said she did not "put two and two together" as to the identity of the male she saw, and his connection to the robbery, until Lieutenant Barbara Stewart ("Stewart") showed her the Claimant's photograph and mentioned his name. In turn, Stewart claimed that she obtained the photograph by searching the Track Repeat Arrestees Program ("TRAP"), a computer database with information on people arrested in Broward County, Florida, or on prisoner release and living in the area. Stewart testified that, going off of Venhuizen's impressions of the offender, she searched through photographs in TRAP until she found a photograph of a black male who looked neat, like he cared about his appearance; that male happened to be the Claimant, and it was at this point that the Claimant first became a suspect.

[1] The details of the offense for which the Claimant was on parole are discussed in a later section of this Report.

On November 17, 2003, Mellies showed Venhuizen a photographic line-up that included the Claimant's photograph. Though she identified the Claimant as the offender, Venhuizen expressed concern that the Claimant's skin tone was darker than that of the offender. Immediately thereafter, Mellies showed Venhuizen a second photographic line-up, this time using only photographs of the Claimant. Venhuizen selected the fourth photo and said "that's the face."

On November 19, 2003, Mellies also showed Rizk a photographic line-up that included the Claimant's photograph. Rizk testified that he did not identify anyone in this first line-up as the offender. However, Mellies testified that Rizk identified two photographs, including the Claimant's, but was not completely sure of his identification and noted that the "complexion was off." As with Venhuizen, Mellies then showed Rizk a second photographic line-up using only photographs of the Claimant. However, Mellies used the same copy of the second photographic line-up shown to Venhuizen, showing Rizk only the top three photographs so he would not see where Venhuizen had circled a photograph and signed her name. Rizk ultimately selected a photograph from this line-up.

Mellies testified that he also showed a photographic line-up to the boy Bell allegedly saw walking with the Claimant the morning of the robbery after Bell gave him the boy's name. According to Mellies, he conducted this line-up and interviewed the boy at DBES, where the boy was a student, and the boy identified the Claimant as the male he had walked with that morning. However, there is no record of this interview or of the line-up in the State's files.

Based on the witness identifications of Rizk, Venhuizen, and Bell alone, on November 20, 2003, the Claimant was arrested and charged with Armed Robbery and Aggravated Assault with a Firearm. He was 33 years old at the time of his arrest and had 54 days left on his parole.

The Claimant's Alibi

In support of his innocence, the Claimant gave an alibi putting him elsewhere at the time of the robbery. Specifically, the Claimant stated that, early on the morning of November 10, 2003, his girlfriend, Enid Roman ("Roman"), with whom he lived, dropped him at a bus stop so he could catch the bus to work, as he did not have a working vehicle; Roman then drove her three children to school and herself to work. Roman confirmed this, stating that she arrived to work around 6:45 a.m. that day in their only vehicle. Neither Roman's work records nor video surveillance from her place of employment were ever obtained in the investigation.

According to the Claimant, he had to take two busses to his workplace, a high-rise condominium, where he was doing construction work through a temporary staffing agency. The Claimant stated he took the first bus and, once at his stop, got off and walked to a nearby ATM to withdraw money for his lunch. An ATM receipt he produced during the investigation is stamped for 6:52 a.m., and the ATM in question is located at a bank approximately 3.2 miles from the Walgreens. However, no ATM surveillance video was ever obtained in the investigation.

The Claimant then stated that after visiting the ATM, he returned to the bus stop and took a second bus to his workplace, which is located approximately seven miles from the Walgreens. The Claimant believes he arrived around 7:00 a.m. and records show he was paid for a full day's work starting from that time, but his time card was handwritten and the cards were not always filled out contemporaneously. However, Wayne Knox ("Knox"), the Claimant's coworker, stated that he arrived to work around 7:00 a.m. the morning of the robbery and the Claimant arrived sometime between 7:00 a.m. and 7:20 a.m. Marty Weiss ("Weiss"), the site construction manager, stated that he arrived to work at 8:00 a.m. that morning and the Claimant was already there and working. Neither Knox nor Weiss noticed any signs that the Claimant was injured or acting strangely that day, and their testimony suggests that the Claimant always wore construction-appropriate clothing to work, including long pants and steel-toed boots.

Trials and Conviction

On May 10, 2004, the court heard a motion to suppress evidence relating to the photographic line-ups and clothing seized from the Claimant's home on the day of his arrest, specifically black jean shorts and a black jean jacket. The Claimant testified that he wanted the clothing to remain in evidence because it didn't match the clothing described by the victims, who both stated the offender wore blue jean shorts and a blue denim jacket. The court ultimately ruled that the line-ups, though unnecessarily suggestive, were admissible because they were not so suggestive as to cause a substantial likelihood of misidentification. However, the court ruled that the clothing was inadmissible as it was seized without a warrant.

On August 17, 2004, the Claimant's first trial resulted in a hung jury. The State then offered the Claimant seven years' imprisonment in exchange for a plea, but the Claimant declined that offer, maintaining his innocence even though he qualified for a life sentence due to his status a habitual felony offender. In the subsequent re-trial, the State's case rested primarily on Venhuizen's identification of the Claimant as the offender, as there was no physical or documentary evidence linking the Claimant to the crime and Rizk testified for the defense.

On September 21, 2004, the jury returned a guilty verdict on both charges, and the court subsequently sentenced the Claimant to life imprisonment. After his sentencing, the Claimant unsuccessfully appealed his convictions four times and filed a petition for habeas corpus, which the court dismissed. The Claimant continued to stand by his alibi and maintain his innocence throughout these proceedings.

CRU Investigation

On December 3, 2019, the Claimant submitted a conviction review petition to the Seventeenth Judicial Circuit's Conviction Review Unit ("CRU").[2] In April of 2020, the CRU issued a preliminary memorandum, opining that:

> [T]he facts in evidence that we have reviewed under contemporary standards of evidence are troubling.
>
> The issues we find most troublesome are those surrounding how [the Claimant] became a suspect in the first place. Seemingly, a man who had no connection to a Walgreens robbery became the main suspect after someone reviewed photos of well-dressed/neat appearing African American males. That was it…The case became questionable at the very onset. If the identification was bad, then everything that comes after is bad as well.
>
> The original prosecutor also saw the weaknesses in this case. Once…the first jury came back hung, he offered a below guidelines sentence of seven years....

Based on the foregoing, the State filed a motion to reduce the Claimant's sentence to time served. On April 14, 2020, the court granted the motion, and the Claimant was immediately released after more than 16 years' imprisonment to await the outcome of the CRU's full investigation. This investigation would ultimately delve into topics including the boy witness's identity, the use of TRAP, the Claimant's dental records, the offender's left-handed use of a gun, and the Claimant's alibi.

[2] The CRU, created in August of 2019, attempts to identify and remedy wrongful felony convictions which occurred in Broward County, Florida. To accomplish this, the CRU screens conviction review petitions to identify plausible claims of innocence made by convicted defendants, then conducts a thorough investigation of those petitions meriting one. After completing its investigation, the CRU makes a recommendation to the State Attorney, and if the State Attorney believes the conviction was wrongful, the State will attempt to remedy the conviction.

TRAP Photograph

The CRU noted that the "most contested issue of the case" involved Stewart's use of TRAP to identify the Claimant as a suspect. According to the CRU Report, this database was shut down around 2004 in response to a larger scandal known as the "Powertrac scandal," in which Broward County law enforcement officers were allegedly pressured to "solve" crimes through dishonest means, particularly burglaries and robberies.

To understand more about how the database worked, the CRU team contacted retired BSO Chief Peter Sudeler, who helped design the program, and BSO Captain Ed Sileo ("Sileo"). Both indicated that TRAP could not be searched by keyword; thus, there was no way to type in "neatly-dressed black male" or other similar language and return a photograph. Further, Sileo twice searched an archived version of the database, along with an archived version of its predecessor program, without finding photographs of the Claimant; he did, however, locate two Department of Corrections photographs of the Claimant in the current BSO database that predated the Claimant's 2003 arrest. However, these photographs, similar to mug shots, only show the Claimant's face and a small portion of his shirt. Given all of this, Sileo told the CRU that he believed Stewart must have been mistaken in how she came to identify the Claimant as a possible suspect.

The CRU then contacted Stewart, now a BSO Captain, who did not remember her search for a suspect in the Walgreens robbery or her discovery of the photograph supposedly used to identify the Claimant. Stewart did mention that there was a program called "RAP" in place at the time and suggested that the court reporter may have mistakenly typed "TRAP" instead of RAP. However, Sileo advised the CRU that "RAP," which stands for Robbery Apprehension Program, is not a database; rather, it is a program for setting minimum convenience store security requirements.

Based on the foregoing, the CRU determined that Stewart likely did not identify the Claimant through TRAP or RAP. However, the CRU was unable to determine the photograph's actual origin and method of discovery, and thus could not determine how the Claimant initially became a suspect.

Dental Records

Because there was a discrepancy as to the offender's teeth, the CRU had Dr. Carrigan Parish ("Parish"), a dental expert, review records pertaining to the Claimant's case. Parish noted that the composite sketch of the offender showed a missing left lateral incisor, but dental records showed that the Claimant was not missing that particular tooth. Instead, the records showed that he was missing other teeth, including a left central incisor, which would have been clearly visible to both witnesses, neither of whom mentioned that the perpetrator was missing a front tooth. In fact, Rizk did not believe the perpetrator was missing any teeth at all. Thus, the CRU determined that there were inconsistencies between the Claimant's appearance and the offender's description.

Further, the CRU determined that the Claimant wore a partial denture in 2003, and testimony suggests that he always wore it outside the home. However, had he been wearing it during the robbery, Venhuizen would not have noticed any missing teeth. The CRU acknowledged that it was possible that the Claimant removed the partial denture before the robbery to alter his appearance, but ultimately found it unlikely that a person intending to commit robbery would do anything to call attention to a unique feature that could be used to identify him.

Firearm's Expert

Because both Rizk and Venhuizen stated that the suspect held the gun in his left hand, the CRU contacted a firearms expert, BSO Sergeant Bill Pennypacker ("Pennypacker"), who reviewed the case and noted that the dominance of the Claimant's hands was never determined. Pennypacker also opined that whether the suspect held the gun in his left or his right hand was irrelevant, pointing out that many criminals change weapon hands during a crime depending on what they need to do with their dominant hand.

However, Pennypacker also pointed out that there were many other factors that made the case weak to begin with, including a lack of direct evidence against the Claimant and reliance on evidence that, in his opinion, would not be admissible today. Based on the foregoing, the CRU did not draw any conclusions about the dominance of the Claimant's hand or the significance of the offender holding the gun in his left hand.

Boy Witness's Identification

Because he may be a critical witness, the CRU attempted to identify the boy Bell allegedly saw walking with the Claimant on the day of the robbery. Mellies informed the CRU that he remembered nothing about the boy, even after reviewing his deposition, records, and reports, and Bell, deceased by the time of the CRU investigation, had previously stated that she did not know the boy's name.[3] Further, the boy was never identified in the State's records or called as a witness, and the prosecutor who tried the case did not remember his name.

The CRU determined that the Claimant did not have any children, although Roman had three, including a son, J.R., who attended DBES at the time of the robbery; one of the State's theories during the initial investigation had been that the boy Bell allegedly saw with the Claimant was one of Roman's sons. However, Roman testified at trial that her children did not walk to school; instead, she drove her children to school each morning, dropping off her two sons outside DBES. Roman explained that her older son would wait with J.R. until the school gates opened and then would walk to South Broward High School ("SBHS"), where he was enrolled. Roman's daughter, four years old at the time, attended daycare elsewhere and never walked with her brothers to school.

When interviewed by the CRU, Roman stated that her son never mentioned being interviewed by police, and she was never made aware of any such interview; J.R. confirmed that the police never interviewed him. Further, Bell testified that she never saw the boy or his sister again after the robbery, but school records reveal that J.R. attended DBES through 2006. School records also confirmed that Roman's oldest son was enrolled at SBHS at the time of the robbery, and that her daughter did not start at DBES until 2005. Based on the foregoing, the CRU determined that the boy Bell allegedly saw was not Roman's son, but his identity remains unknown.

Claimant's Alibi

Because the Claimant has always maintained that he was not at the Walgreens on the day of the robbery, the CRU investigated his alibi, first determining that there was no surveillance video of the robbery available because Rizk was rewinding the surveillance tape, and thus the surveillance cameras were not recording, when the crime occurred. No other documentary or physical evidence placed the Claimant at the scene.

The CRU then determined that the Claimant's relatives tried to obtain ATM surveillance video from the bank where the

[3] This conflicts with Mellies' testimony that Bell gave him the boy's name.

Claimant allegedly stopped on the morning of the robbery but were told an attorney had to first file a form. The Claimant alleges he told his attorney about this but for reasons unknown the attorney did not obtain the video. Further, the prosecutor claims he did not learn of the Claimant's alibi until after the bank's surveillance video retention period had passed and the video was deleted; thus, he was unable to obtain the video.

However, the testimony of Knox and Weiss suggests that the Claimant arrived to work sometime between 7:00 a.m. and 7:20 a.m. on the day of the robbery, and that he was definitely there and working before 8:00 a.m. The CRU determined that the only way for the Claimant to have been at the ATM at 6:52 a.m., commit the robbery from 7:15 a.m. to 7:24 a.m., change his clothing and shoes, and arrive to work by that time would be if he had been driving a vehicle. Even then, the CRU determined that the timeline is improbable when accounting for the distances between these locations, several school zones, and morning traffic. Furthermore, testimony suggests that the Claimant did not have access to a vehicle on the day of the robbery, and both Rizk and Venhuizen testified that the offender left the scene on foot.

CRU Conclusion and Exoneration

On December 8, 2020, the CRU released a memorandum noting that the only evidence tying the Claimant to the Walgreens robbery was Venhuizen's questionable identification of the Claimant as the offender, and that the Claimant's alibi was well established. The memorandum went on to state that "a complete review of the evidence presented at trial and in discovery, as well as further investigation…demonstrates that the case against [the Claimant] gives rise to a reasonable doubt as to his culpability, and that he is most likely innocent."

On December 11, 2020, the court vacated the Claimant's judgment and sentence, ordering a retrial, and the State subsequently entered a nolle prosequi on both charges.

Claimant's Criminal History

The Claimant had five felony convictions before his November 20, 2003, arrest for the Walgreens robbery. Firstly, on October 2, 1989, the Claimant was convicted of Battery on a Law Enforcement Officer, a third-degree felony, Escape, a second-degree felony, and Grand Theft Auto, a third-degree felony. According to an arrest report, on August 4, 1988, the Claimant was driving a vehicle erratically. An officer who witnessed the Claimant driving ran a check on the vehicle's tag, discovering that the vehicle had been reported stolen. The Claimant was then stopped and arrested for Grand Theft Auto.

Though the Respondent was unable to obtain the arrest report or charging affidavit for the Claimant's Battery and Escape charges, the Claimant testified as to the circumstances of these arrests during the Special Master hearing. Specifically, he testified that over the 1989 Memorial Day Weekend, he had been heading to the beach with friends when their car was stopped at a police checkpoint; when he identified himself to the officers, one officer told him that he had a traffic ticket and placed him under arrest. The Claimant said he was then put in plastic zip-tie handcuffs and placed in the back of a sweltering police van, but his cuffs somehow slipped off and he decided to make a run for it so that he could go to the beach and escape the heat. When an officer opened the van door, he pushed the door into the officer and jumped out, running to the beach before he was apprehended. However, the Claimant testified that he never intended to hurt the officer; his intention had only been to open the door so he could escape. The Claimant was ultimately sentenced to 366 days' incarceration for the Grand Theft Auto, Battery, and Escape charges.

Subsequently, on May 6, 1991, the Claimant was convicted of Robbery by Sudden Snatching, a second-degree felony.[4] According to the arrest report, on December 10, 1990, the Claimant and a co-defendant approached two women at a shopping center, each grabbing a purse from one of the women before fleeing the scene in a vehicle. Shortly thereafter, officers located and stopped the vehicle, securing the Claimant and the co-defendant, and the victims were brought to the scene, where they positively identified both the Claimant and the co-defendant along with the vehicle in which they had fled. A subsequent vehicle search led to the recovery of both victims' purses and the arrest of the Claimant and the co-defendant. Because the Claimant qualified as a habitual felony offender, the State sought enhanced sentencing on the Robbery charge, and the Claimant was ultimately sentenced to 10 years' incarceration.

Finally, on December 15, 1999, the Claimant was convicted of Possession of Cocaine, a third-degree felony. According to the arrest report, on May 17, 1999, the Claimant's person was searched incident to a trespassing arrest. The officer conducting the search located a small bag of cocaine in the Claimant's front right pocket and added the Possession charge. The Claimant was ultimately sentenced to seven months' incarceration.

Claimant's Position

The Claimant asserts that he is actually innocent of the charges and seeks monetary compensation for his time spent incarcerated.

[4] Robbery by Sudden Snatching was a second-degree felony in 1990, but it became a third-degree felony in 1999.

Respondent's Position

The Respondent did not present a case at the final hearing. However, during her testimony as a witness for the Claimant, the CRU attorney testified that the State "fully support[s]" the claim bill and has "no doubt" as to Claimant's innocence.

CONCLUSIONS OF LAW:

Wrongful Incarceration Relief under Chapter 961

Chapter 961, Florida Statutes, governs the general process for compensating wrongful incarceration victims. This chapter requires a person claiming to be such a victim to prove that he or she is actually innocent of the crime for which he or she was incarcerated and meet other criteria, including that the claimant not have more than one felony conviction on his or her record that predates or occurred during the wrongful incarceration.[5]

In the instant matter, the Claimant is ineligible for and thus has been unable to obtain relief under chapter 961 because of the five felonies for which he was convicted prior to his conviction and incarceration for the Walgreens robbery. However, the Legislature is not bound by the chapter 961 process and may pass this claim bill in spite of the Claimant's criminal record.

Evidentiary Standard for Victims of Wrongful Incarceration

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence - that is, that the claimant's position is more likely to be true than untrue. However, a claimant seeking a claim bill for wrongful incarceration must demonstrate actual innocence.

Since 2012, the House Special Master has applied a "clear and convincing" standard to wrongful incarceration claim bills, which is an intermediate burden of proof requiring that the evidence be of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."[6] Two wrongful incarceration claim bills passed by the Legislature since that time applied the clear and convincing standard, and it is also the standard applied to claims for relief under chapter 961.[7]

While the Legislature is not bound by a previous Legislature's actions, the Legislature's prior acceptance of the clear and convincing standard, coupled with the Legislature's selection of that standard for chapter 961 proceedings, demonstrates that the clear and convincing standard is appropriate for wrongful

[5] *See* ss. 961.03, 961.04, F.S.
[6] *See S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So.3d 869, 872 (Fla. 2014).
[7] *See* s. 961.03(3), F.S. (stating that a wrongful incarceration victim is entitled to relief if he or she can present "clear and convincing evidence that [he or she] committed neither the act nor the offense that served as the basis for the conviction and incarceration," and meet other requirements).

incarceration claim bills.[8] In light of the foregoing, I find that the clear and convincing standard should apply in the instant matter, in accordance with House precedent and legislative intent.

Application of Burden of Proof to Claimant's Case

In determining whether the Claimant proved his actual innocence by clear and convincing evidence, I find the following to be persuasive:

- The Claimant maintained his innocence from the time of his arrest through the vacatur of his judgment and sentence, going so far as to reject a below-guidelines, seven-year plea offer despite facing a life sentence.
- There is no direct evidence, such as DNA, fingerprints, or video surveillance, linking the Claimant to the crime.
- The victims sat together with a detective to work on a composite sketch of the offender but disagreed with each other as to the offender's description and the sketch's accuracy.
- The only evidence linking the Claimant to the robbery was Venhuizen's identification, made through overly-suggestive photo-lineups.
- Rizk was not 100 percent sure of the identification he made from the photo line-ups, did not believe he had identified anyone in the first line-up, and testified as a defense witness in the second trial.
- The inclusion of the Claimant in the photo line-ups shown to Rizk and Venhuizen appears to have been predicated on Bell's identification of the Claimant as the man she saw shortly before the robbery. This identification was allegedly made only after Stewart showed Bell a photograph of the Claimant of uncertain origin, despite the fact that Bell and the Claimant met before the robbery.
- The boy Bell allegedly saw with the Claimant, a key witness, is not identified in any State records and the record is inconsistent as to whether he was ever interviewed. No record of such an interview exists, and he was never called to testify at trial.
- Venhuizen was adamant that the offender was missing teeth on the left side of his mouth, while Rizk said that the offender did not have any missing teeth. While the Claimant was missing teeth at the time of the robbery, the Claimant is not missing the tooth shown as missing

[8] Additionally, while not dispositive as to legislative intent, it would seem odd to require a person with "clean hands" seeking relief under chapter 961, F.S., to prove his or her innocence by a clear and convincing standard, while requiring a person ineligible for relief under chapter 961, F.S., to prove his innocence by the lesser preponderance of the evidence standard.

> in the composite sketch. Further, the Claimant is missing other teeth, including his front central incisor, but wore a partial denture. Had Claimant been wearing his partial denture during the robbery, Venhuizen would not have seen missing teeth. However, had he not been wearing the partial denture, his missing front tooth would have been clearly noticeable; neither victim said that the offender was missing a front tooth.

Furthermore, I give great weight to the fact that the Claimant's innocence came to light through the State's own investigation. Such was the State's concern about the Claimant's continued incarceration during its investigation that the State recommended and ultimately obtained a reduction of his sentence and his immediate release from prison. Additionally, at the conclusion of the investigation, the State, convinced of the Claimant's innocence, recommended and ultimately obtained the vacatur of the Claimant's judgment and sentence and entered a nolle prosequi on both counts.

In light of the foregoing, I find that the Claimant has successfully demonstrated, by clear and convincing evidence, that he is actually innocent of the crimes for which he was convicted – that is, Armed Robbery and Aggravated Assault with a Firearm.

Amount of Claim Bill

Section 961.06(1)(a), Florida Statutes, provides that "monetary compensation [shall] be calculated at a rate of $50,000 for each year of wrongful incarceration." The Claimant seeks a total monetary award of $817,000, which is $50,000 for each of the more than sixteen years that he was wrongfully incarcerated.

Exhaustion of Remedies

House Rule 5.6(c) requires a claim bill to be held in abeyance until a claimant has exhausted "all available administrative and judicial remedies. . . ."[9] In the instant matter, the Claimant is ineligible for chapter 961 relief due to his criminal record.

ATTORNEY'S/ LOBBYING FEES: The Claimant's attorneys and lobbyists represent him on a pro bono basis. Thus, there are no attorney fees, lobbying fees, or costs associated with this claim bill.

RESPONDENT'S ABILITY TO PAY: Because any monetary award would presumably come from the General Revenue Fund, the Office of the State Attorney would not be responsible for paying the award and its operations would not be affected.

[9] Senate Rule 4.81(6), while including a similar exhaustion of remedies requirement, states that such requirement "does not apply to a bill which relates to a claim of wrongful incarceration."

RECOMMENDATIONS: Because I find that the Claimant has demonstrated by clear and convincing evidence that he is actually innocent of the crimes for which he was convicted – that is, Armed Robbery and Aggravated Assault with a Firearm – I recommend that House Bill 6001 be reported FAVORABLY.

Respectfully submitted,

CAITLIN R. MAWN,
House Special Master

cc: Representative Gottlieb, House Sponsor
Senator Jones, Senate Sponsor
Amanda Stokes, Senate Special Master